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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,185	01/18/2002	Sander Palvoelgyi	19361-089285	1155
28886	7590	09/21/2004	EXAMINER	
CLARK HILL, P.C. 500 WOODWARD AVENUE, SUITE 3500 DETROIT, MI 48226			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 09/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/052,185

Applicant(s)

PALVOELGYI ET AL.

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Due to the new grounds of rejection, this action is **Non-Final**.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "said sealing surface" in the last line. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 8 is objected to because of the following informalities: "said sealing surface" should be amended to define the first or second sealing surface. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Palvolgyi US 6,685,045.

Palvolgyi '045 teaches a plug for a filler neck comprising a wall (unlabeled; read to be the horizontal wall extending outward from (1)), inwardly projecting lip (5) defining a sealing surface, removable lid (2) defining a second sealing surface along the circumferential periphery thereof, first and second spaced apart grooves in the second sealing surface, first (10) and second (9) sealing rings and a sealing gap for limiting the contact surface area of the fuel vapors.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palvolgyi US 6,685,045 in view of Gerhardt et al. US 6,516, 964.

Palvolgyi '045 does not disclose a reinforcement member.

Gerhardt '964 teaches a reinforcement member (8) for supporting neck bead (5).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the neck of Palvolgyi '045, providing a reinforcement member such as that taught by Gerhardt '964, motivated by the benefit of supporting the neck against external forcing.

Regarding claims 3-4, the sealing rings of Palvolgyi '045 are horizontally parallel and extend conically inward, and are circumferential.

Regarding claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the reinforcement member on the inside wall of Palvolgyi '045. Examiner notes the collar fits around a vertically-extending neck that is perpendicular to the fuel tank wall (1) on which it is disposed, creating a flush connection with the neck bead (5) and wall (1). The neck of Pavolgyi '045 extends perpendicularly downward from the neck and it would have been obvious to place the reinforcement member underneath the fuel tank wall, adjacent the lower end of neck (17), to reinforce against the insertion of a filler pump dispensing head. Further, it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

9. Claims 1-2 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dykeman US 2,316,507 in view of Gerhardt et al. US 6,516,964 and in view of Stanek et al. US 5,746,359.

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Dykeman '507 teaches a filler cap and neck comprising a wall (27) for enclosing a fluid, inwardly projecting lip (4), reinforcement member (1) having inner and outer vertical surfaces to define a first sealing surface (5) and a removable lid (10) having a second sealing surface.

Dykeman '507 does not disclose first and second radial grooves, having first and second sealing rings, with a gap provided therebetween.

Stanek '359 teaches it is known to provide a cap seal of two sealing rings located adjacent each other. Examiner reads these rings to be separate, despite being apparently molded in one piece, because each provides a unique sealing surface at its contact point with the cap and sealing neck. However, Stanek '359 does not disclose radial grooves, or a gap.

Gerhardt '964 teaches it is known to provide dual sealing rings within radial grooves, and a gap therebetween. In col. 3, lines 33-34, Gerhardt '964 teaches the escape of fuel vapors is kept low.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sealing surface of Dykeman '507, providing first and second radial grooves to receive first and second sealing rings with a gap therebetween, and orient them horizontally along the sealing surface, as taught by the combined teachings of Stanek '359 and Gerhardt '964, motivated by the benefit of keeping the escape of fuel vapors low.

Regarding claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to relocate the grooves to the sealing surface, motivated by design choice. Furthermore, it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

10. Claims 3-6 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dykeman US 2,316,507 in view of Gerhardt et al. US 6,516,964 and in view of Stanek et al. US 5,746,359 as applied to claim 1 above, and further in view of Shaw US 4,467,937.

Dykeman '507 does not teach the sealing surface extending conically inward.

Shaw '937 teaches it is known to form a sealing surface of bayonet-secured fuel cap conically inwardly. Examiner notes the two sealing surfaces are mechanical expedients and would function equally

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well. One having ordinary skill would find it obvious to substitute one for another, motivated by design choice.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sealing surface of Dykeman '507 forming it conically inwardly as taught by Shaw '937, motivated by design choice.

Regarding claim 6, the reinforcement member comprises an inwardly formed flange (3), as it is integrally connected through the lip (4), and the lid includes an outwardly formed flange (19).

Regarding claim 12, it would have been obvious to one having ordinary skill in the art to form the sealing ring of an elastomer with high permeation resistance. Such seals are extremely well known, and their use is widespread in fuel-tank sealing.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,685,045 (Palvolgyi). Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claim 1 of Palvolgyi '045 anticipates all limitations of pending claim 1 in the instant application.

Response to Arguments

12. Applicant's arguments, see Remarks, filed 10 June 2004, with respect to the rejection(s) of claim(s) 1-12 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as applied above.

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Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

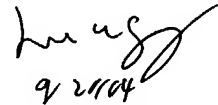
US 6,360,76

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns



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